

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EVA A. RAMIREZ,

Plaintiff,

v.

OLYMPIC HEALTH MANAGEMENT
SYSTEMS, INC., a Washington
Corporation,

Defendant.

NO. CV-07-3044-EFS

**ORDER GRANTING IN PART
DEFENDANT'S MOTION FOR
RECONSIDERATION**

In April 2009, the Court dismissed Plaintiff Eva A. Ramirez' constructive discharge claim against Defendant Olympic Health Management Systems, Inc., but permitted her discrimination, retaliation, hostile work environment, and punitive damages claims to survive to trial. (Ct. Rec. 282.) Defendant now asks the Court to reconsider its ruling on Plaintiff's retaliation and punitive damage claims in order to prevent manifest injustice. (Ct. Rec. 287.) Although reconsideration is highly unusual, it is appropriate if the district court is presented with 1) newly-discovered evidence, 2) an intervening change in controlling law, or 3) evidence that its decision was manifestly unjust. *Navajo Nation v. Norris*, 331 F.3d 1041, 1046 (9th Cir. 2003); *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). After

1 review, the Court agrees in part - preventing manifest injustice
2 necessitates dismissing Plaintiff's retaliation claim; her punitive
3 damages claim, meanwhile, remains an issue for trial.

4 I. Discussion

5 A. Retaliation Claim

6 The Court initially concluded that Plaintiff's retaliation claim
7 was a jury question because Defendant's decision to hold an inter-office
8 conference call about her discrimination complaint, while well-
9 intentioned, violated Defendant's privacy policy and could deter
10 reasonable workers from disclosing sensitive harassment complaints.
11 (Ct. Rec. 282 at 26.)

12 There are three (3) reasons that warrant the Court to reconsider
13 this decision. First, Defendant's complaint-investigation policy does
14 not guarantee privacy; rather, it states that confidentially will be
15 maintained "to the extent possible." (Ct. Rec. 136-8 at 63.) Second,
16 Plaintiff's retaliation claim, which rests on the impropriety of being
17 asked to publicly disclose discrimination concerns, is belied by
18 Plaintiff's own conduct because she made her concerns known to the
19 entire office before the inter-office conference call.¹ Third, the Court
20 previously concluded that Defendant's inter-office conference call was
21 well-intentioned and even made Plaintiff feel "good." (Ct. Rec. 282 at
22 25-26.) In such scenarios, Ninth Circuit case law is clear: "An
23 employer's legitimate effort to deal with a traumatic workplace
24

25 ¹When asked who she spoke with about the Mexican wall comment,
26 Plaintiff responded: "When we got back to the office, everybody."
(Ct. Rec. 136-2 at 99.)

1 situation and educate its employees regarding [] harassment cannot be
2 the basis for a retaliation claim under Title VII." *Brooks v. City of*
3 *San Mateo*, 229 F.3d 917, 929 (9th Cir. 2000). Given Defendant's well-
4 intentioned - and well-received - efforts, Plaintiff's retaliation claim
5 cannot survive.

6 **B. Punitive Damages Claim**

7 Defendant argues that a similar fate awaits Plaintiff's punitive
8 damages claim because 1) there is no evidence that it acted with either
9 evil motive or reckless indifference to Plaintiff, and 2) it cannot be
10 vicariously liable for the discriminatory employment decisions of its
11 managers when those decisions "are contrary to the employer's 'good-
12 faith efforts to comply with Title VII.'" (Ct. Rec. 288 at 4) (citing
13 *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 545 (1999)).

14 Defendant is mistaken. There is evidence that Defendant acted with
15 either evil motive or reckless indifference to Plaintiff.² Examples
16 include Barbara Bloomfield's repeatedly discriminatory conduct and
17 statements towards Plaintiff, as well as Katrina Borth and Betty Hill's
18 failure to initially report or address Plaintiff's complaints about
19 Ms. Bloomfield in a zero tolerance environment. And even though
20 Defendant has a well-established anti-harassment policy, vicarious
21 liability may nevertheless exist because the three (3) supervisors
22 responsible for enforcing Defendant's anti-harassment policies at the
23 Yakima office - Ms. Hill, Ms. Borth, and Ms. Bloomfield - either delayed
24 or did not at all report the workplace misconduct Plaintiff complained
25

26 ²Of course, this is after viewing the evidence in Plaintiff's favor.
See *Leslie v. Grupo ICA*, 198 F.3d 1152, 1158 (9th Cir. 1999).

1 of. The Court therefore properly concluded that punitive damages is a
2 jury question. Because there is no manifest injustice, reconsideration
3 on this issue is inappropriate.

4 **II. Conclusion**

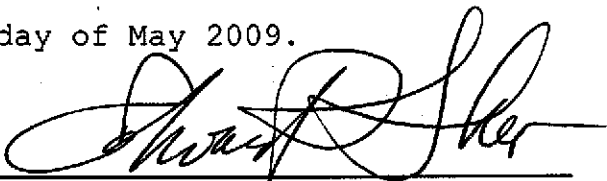
5 Accordingly, **IT IS HEREBY ORDERED:**

6 1. Defendant's Motion for Reconsideration (**Ct. Rec. 287**) is **GRANTED**
7 (retaliation claim is dismissed) and **DENIED** (punitive damages claim
8 survives) **IN PART**.

9 2. An Amended Summary Judgment Order will follow.

10 **IT IS SO ORDERED.** The District Court Executive is directed to
11 enter this Order and to provide copies to counsel.

12 **DATED** this 2nd day of May 2009.

13 

14 EDWARD F. SHEA
15 United States District Judge

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